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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA
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11 BRADLEY BOARDMAN, et al.,

12 Plaintiffs,

13 v.

14 JAY R. INSLEE, et al.,

15 Defendants

16 and

17 CAMPAIGN TO PREVENT FRAUD
AND PROTECT SENIORS,

18 Defendant-Intervenors.
19
20

CASE NO. C17-5255 BHS

ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT,
INTERVENOR-DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT, AND DENYING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

21 This matter comes before the Court on Defendants Governor Jay R. Inslee,
22 Patricia Lashway, Director of the Washington Department of Social and Health Services

1 (“DSHS”), and Ross Hunter, Director of the Washington Department of Early Learning’s
2 (“DEL”) (collectively “State”) motion for summary judgment, Dkt. 47, Defendant-
3 Intervenor the Campaign to Prevent Fraud and Protect Seniors’s (“Campaign”) motion
4 for summary judgment, Dkt. 48, and Plaintiffs Bradley Boardman (“Boardman”),
5 Deborah Thurber (“Thurber”), Shannon Benn (“Benn”), and Freedom Foundation’s
6 (“Freedom Foundation” or “the Foundation”) (collectively “Plaintiffs”) cross-motion for
7 summary judgment, Dkt. 50. The Court has considered the pleadings filed in support of
8 and in opposition to the motions and the remainder of the file and hereby rules as follows:

9 **I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

10 On June 30, 2014, the Supreme Court decided *Harris v. Quinn*, 134 S. Ct. 2618
11 (2014). *Harris*, in Plaintiffs’ framing, held that in-home caregivers who are paid through
12 the Medicaid program to provide in-home care for adults and children (“caregivers”)
13 “could not be forced to belong to or otherwise financially support a union because it
14 violated their First Amendment rights.” Dkt. 50 at 7. Plaintiffs explain that their interest
15 in contacting caregivers in Washington arose “[i]mmediately after *Harris* was issued in
16 2014.” Dkt. 50 at 7. On July 2, 2014, two days after the decision, the Freedom
17 Foundation submitted public records requests to DSHS and DEL, seeking a list of
18 caregivers from each. Dkt. 50 at 12 (citing Dkt. 6, Declaration of Maxford Nelson
19 (“Nelson Decl.”), at 3–4). DEL provided the requested list, and “[f]or over two and a half
20 years, the Foundation has been using this list to reach Childcare Providers and informing
21 them of their right to leave the union.” Nelson Decl. at 4. DSHS “determined that the
22 names of [caregivers] were disclosable information” but, according to Plaintiffs, “delayed

1 disclosure long enough to allow SEIU 775 to sue [DSHS] and the Foundation to prevent
2 disclosure of the records.” *Id.* at 4.¹ Though the suit was ultimately unsuccessful, the state
3 trial court granted a temporary restraining order preventing disclosure and kept it in place
4 until the appeal was resolved in 2016 in favor of the Foundation. Dkt. 50 at 12.
5 Additional disputes over public records requests followed. Dkt. 50 at 12.

6 Washington voters enacted Washington State Initiative 1501 (“the Initiative”) in
7 the 2016 general election. Dkt. 47 at 4. The Initiative’s text described its intent to:

8 protect the safety and security of seniors and vulnerable individuals by (1)
9 increasing criminal penalties for identity theft targeting seniors and
10 vulnerable individuals; (2) increasing penalties for consumer fraud
11 targeting seniors and vulnerable individuals; and (3) prohibiting the release
12 of certain public records that could facilitate identity theft and other
13 financial crimes against seniors and vulnerable individuals.

14 Dkt. 47-1 at 5, Text of the Initiative. Plaintiffs challenge Part Three of the Initiative,
15 which amended Washington’s Public Records Act, RCW Chapter 42.56 (“PRA”). The
16 PRA provides for broad public access to state records, *see* WAC 44-14-01003, but state
17 statutes have also created hundreds of exceptions. *See* Dkt. 49-5, Declaration of Gregory
18 Wong, Ex. E Table of Exemptions from Public Records Disclosure.² The Initiative added
19 an exception for “sensitive personal information of vulnerable individuals and sensitive
20 personal information of in-home caregivers for vulnerable populations from inspection
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¹ Two chapters of the Service Employees International Union (“SEIU”) represent
caregivers in Washington State: SEIU 775 and SEIU 925. Dkt. 50 at 7.

² As the Campaign explains “[s]ome exemptions have obvious policy bases, such as for
the identity of victims or witnesses of crime, while others are less obvious, such as information
in commercial fertilizer reports and personal information of individual American ginseng
growers and dealers.” Dkt. 48 at 18 (citing RCW 42.56.240(2), 42.56.380(2), 42.56.380(6)).

1 and copying” under the Act, and defined sensitive personal information to include names,
2 in addition to addresses, GPS coordinates, telephone numbers, email addresses, social
3 security numbers, driver’s license numbers, “or other personally identifying information.”
4 Dkt. 47-1 10.

5 Neither party provides an explicit comparison of which identifying data points
6 were available prior to the passage of the Initiative which are now not available.³ Based
7 on the Court’s examination of the text of RCW 42.56.250(4), “[r]esidential addresses,
8 residential telephone numbers, personal wireless telephone numbers, personal electronic
9 mail addresses, social security numbers, and emergency contact information of
10 employees or volunteers of a public agency” in personnel records or public employment
11 related records have been excluded from public inspection and copying since at least
12 2006,⁴ and driver’s license numbers and identicard numbers have been excluded since
13 2014.⁵ Comparing this information to § 8(2)(b) of the Initiative, it appears that for
14 caregivers, the only additional information the Initiative withholds is their names. *See*
15 Dkt. 47-1 10.

16 The Initiative continues to allow some entities to access caregiver identities,
17 including the certified bargaining representative under RCW 41.56.080, *see* § 11(d),
18 parties to contracts with the state where the contract requires disclosure, *see* § 11(f), or

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20 ³ Plaintiffs argue the only “effective change was to keep non-preferred entities and
individuals such as Plaintiffs from learning the names of the [caregivers].” Dkt. 50 at 6.

21 ⁴ *See* 2006 Wash. Sess. Laws ch. 209 § 6 (recodifying and making technical corrections
to public disclosure law).

22 ⁵ *See* 2014 Wash. Sess. Laws ch. 106 § 1.

1 entities under contract with the state to provide services to or conduct research about
2 vulnerable residents, *see* § 11(g).

3 The argument for the Initiative in the Voters' Guide noted that seniors and
4 vulnerable people were particularly at risk of identity theft and other financial
5 exploitation or scams. Dkt. 49-2 at 6–7. The argument against the Initiative in the Guide
6 claimed the Initiative's goal "is to rewrite the Public Records Act to prevent in-home
7 caregivers and childcare providers from learning they no longer can be forced to pay dues
8 to the union." *Id.*

9 On April 5, 2017, Plaintiffs filed a complaint against the State alleging that the
10 Initiative violates Plaintiffs' rights to free speech and free association under the First
11 Amendment, and right to equal protection of the laws under the Fourteenth Amendment,
12 seeking a permanent injunction enjoining the State from enforcing the Initiative. Dkt. 1,
13 ¶¶ 89–132.

14 Also on April 5, Plaintiffs filed a motion for a temporary restraining order against
15 the State, seeking to enjoin the Initiative. Dkt. 2. Plaintiffs raised their First Amendment
16 and Equal Protection claims, as well as Thurber and Benn's desire to call an election to
17 replace SEIU 925 with another union for child caregivers. Dkt. 2 at 12. To call an
18 election at that time, they would have had to "convince 30% of Childcare Providers to
19 call for an election during the month of April" to meet the deadline, sixty days prior to
20 the expiration of the then-current collective bargaining agreement for child caregivers.
21 Dkt. 2 at 12. On April 10, 2017 the State responded, Dkt. 15, and the Court held a
22 hearing. The Court denied the temporary restraining order due to Plaintiffs' failure to

1 show a likelihood of success on the merits and delay in bringing the motion. Dkt. 21.
2 Also on April 10, the Campaign filed a motion to intervene as a defendant. Dkt. 17. On
3 May 11, 2017, the Court granted the Campaign's motion to intervene. Dkt. 31.

4 On July 17, 2018, the State and the Campaign each filed motions for summary
5 judgment. Dkts. 47, 48. On July 18, 2018, Plaintiffs filed a cross-motion for summary
6 judgment. Dkt. 50. On August 6, 2018, the parties responded. Dkts. 60, 61, 63. On
7 August 10, 2018, the parties replied. Dkts. 65, 67, 68.⁶

8 II. DISCUSSION

9 In this case, the dispute centers on whether Part Three of the Initiative violates the
10 Constitution. Both sides agree the dispute is primarily legal rather than factual. Dkts. 47
11 at 3, 48 at 14, 63 at 7. The primary legal question is whether a statute enacted by
12 Washington voters is constitutional. As a threshold matter, legislative classifications are
13 presumed constitutional, and "the burden of showing a statute to be unconstitutional is on
14 the challenging party." *N.Y. State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 17
15 (1988).

16 Regarding the merits, Plaintiffs assert two Equal Protection claims and three First
17 Amendment claims. The Court considers the First Amendment claims first, concluding
18 that Plaintiffs have failed to establish any violation of a fundamental right. Based on that
19 conclusion, the Court grants the State and the Campaign's motions for summary

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21 ⁶ On November 30, 2018, the Campaign filed a notice of supplemental authority. Dkt. 71.
22 Plaintiffs moved to strike the supplemental authority on December 5, 2018. Dkt. 72. The
Campaign responded on December 12, 2018. The Court does not address the case updated in the
Campaign's notice, and so does not address Plaintiffs' motion.

1 judgment on Plaintiffs' First Amendment claims and first Equal Protection claim, which
2 is based on interference with a fundamental right. The Court then considers Plaintiffs'
3 second Equal Protection claim under rational basis review and concludes that Plaintiffs
4 have failed to establish any constitutional violation.

5 **A. Summary Judgment Standard**

6 Summary judgment is proper only if the pleadings, the discovery and disclosure
7 materials on file, and any affidavits show that there is no genuine issue as to any material
8 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
9 The moving party is entitled to judgment as a matter of law when the nonmoving party
10 fails to make a sufficient showing on an essential element of a claim in the case on which
11 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
12 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
13 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
14 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
15 present specific, significant probative evidence, not simply "some metaphysical doubt").
16 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if
17 there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
18 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
19 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d
20 626, 630 (9th Cir. 1987).

21 The determination of the existence of a material fact is often a close question. The
22 Court must consider the substantive evidentiary burden that the nonmoving party must

1 meet at trial—e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
2 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
3 issues of controversy in favor of the nonmoving party only when the facts specifically
4 attested by that party contradict facts specifically attested by the moving party. The
5 nonmoving party may not merely state that it will discredit the moving party’s evidence
6 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
7 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
8 nonspecific statements in affidavits are not sufficient, and missing facts will not be
9 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

10 **B. First Amendment**

11 Plaintiffs allege that creating a PRA exception for caregiver identities interferes
12 with Plaintiffs’ exercise of free speech and association because the identity lists “are
13 essential for both Plaintiffs and the Unions to engage in political speech with
14 [caregivers].” Dkt. 1, ¶ 96. Plaintiffs rely on seven lines of doctrine to support their claim
15 that the exception burdens their First Amendment speech and association rights: (1)
16 methods of communication cases, (2) access to government cases, (3) ballot access
17 cases, (4) right to listen cases, (5) viewpoint discrimination cases, (6) overbreadth cases,
18 and (7) freedom of association cases. The Court concludes that none of the authorities
19 cited by Plaintiffs establishes that the Initiative burdens their First Amendment rights.

20 **a. Methods of Communication**

21 Plaintiffs argue that the substantial Supreme Court precedent protecting picketing
22 and door-to-door pamphlet distribution shows the First Amendment prohibits banning

1 access to a particular audience or a particular method of communication. Dkt. 50 at 21.
2 *See, e.g., Martin v. City of Struthers*, 319 U.S. 141, 146–47 (1943) (“Freedom to
3 distribute information to every citizen wherever he desires to receive it is so clearly vital
4 to the preservation of a free society that, putting aside reasonable police and health
5 regulations of time and manner of distribution, it must be preserved.”); *Schneider v. State*
6 *of New Jersey, Town of Irvington*, 308 U.S. 147, 164 (1939) (“[P]amphlets have proved
7 most effective in the dissemination of opinion. And perhaps the most effective way of
8 bringing them to the notice of individuals is their distribution at the homes of the
9 people.”). Plaintiffs also cite *Meyer v. Grant*, 486 U.S. 414 (1988), where the state
10 impermissibly prohibited paying petition circulators, to support the proposition that
11 courts find burdens on speech when laws restrict the number of voices putting forward a
12 particular message or reduce speakers’ “ability to make the issue a statewide discussion.”
13 Dkt. 50 at 19 (citing 486 U.S. at 421–22). Plaintiffs convincingly establish that the
14 Supreme Court values affordable methods of distributing speech, but their cited
15 authorities do not support the proposition that the First Amendment compels the
16 government to disclose information to help speakers identify their target audience. Unlike
17 the cited authorities, the Initiative does not burden any methods of communication
18 Plaintiffs may use to speak to caregivers once Plaintiffs have identified them—Plaintiffs
19 may canvass, hire paid canvassers, distribute pamphlets, make speeches, advertise and
20 hold meetings, picket, or send mailers to distribute their speech. Thus, Plaintiffs have
21 failed to establish any unconstitutional restriction on a method of communication.
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1 Plaintiffs also cite *Police Department of Chicago v. Mosely*, 408 U.S. 92, 95–96
2 (1972) (city ordinance allowing only labor-based picketing near schools) and *Carey v.*
3 *Brown*, 447 U.S. 455 (1980) (state law exempting labor-based picketing from ban on
4 picketing at dwelling-places) for the proposition that differential treatment of union and
5 non-union speech violates the Equal Protection Clause. Dkt. 50 at 27–28.⁷ In *Perry Educ.*
6 *Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37 (1983) (“*Perry Education*”), the rival
7 union cited *Mosely* and *Carey* for the proposition that the certified teacher’s union’s
8 exclusive access to teacher mailboxes violated the First Amendment and the Equal
9 Protection Clause. *Id.* at 41, 54. There, the Supreme Court distinguished *Mosely* and
10 *Carey*, saying “[t]he key to those decisions . . . was the presence of a public forum. In a
11 public forum, by definition, all parties have a compelling right of access.” *Id.* at 54–55.

12 In this case, Plaintiffs have failed to establish a “forum” wherein the alleged
13 discrimination is occurring. Plaintiffs have failed to cite, and the Court is unaware of
14 any, authority for the proposition that a list of names is either a public or private forum
15 for communication. Unlike a set of mailboxes allowing a speaker to insert pamphlets, a
16 list of names simply identifies individuals. Thus, Plaintiffs’ reliance on *Mosely* and *Carey*
17 is misplaced. Even if the list could be considered a forum, the Supreme Court has held
18 that “when government property is not dedicated to open communication the government
19 may—without further justification—restrict use to those who participate in the forum’s
20 official business,” particularly when substantial alternative channels remain open for the

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22 ⁷ The Court will also address Plaintiffs’ concerns about distinguishing between union and
non-union speech in its discussion of viewpoint discrimination.

1 rival union. *Id.* at 53. Plaintiffs fail to establish that the list is dedicated to open
2 communication or that they would participate in the list’s official business. Thus, the
3 state may, “without further justification,” restrict access to the list. *Id.*

4 Plaintiffs also rely on *Perry Education* in arguing that they have a right to access
5 government information identifying caregivers because, they believe, there is no other
6 simple or inexpensive way to identify caregivers. Dkt. 63 at 9–10. Plaintiffs, however,
7 fail to establish a fundamental constitutional right based on the alleged difficulty of their
8 intended task. Similar to *Perry Education*, Plaintiffs fail to show that their ability to
9 “communicate” with their intended audience is seriously impinged by Part Three of the
10 Initiative. 460 U.S. at 53 (“There is no showing here that [the rival union’s] ability to
11 communicate with teachers is seriously impinged by the restricted access to the internal
12 mail system.”). The Court recognizes that Plaintiffs would be more easily able to contact
13 the audience if they had access to the list of identities, but speaking or communicating
14 and contacting a specific recipient are distinctly different acts. Therefore, Plaintiffs’
15 reliance on these methods of communication cases is without merit.

16 **b. Government Access**

17 Perhaps the most vehement disagreement between the parties is about how to
18 properly apply the First Amendment doctrines on access to government records or
19 proceedings to the facts of this case. Defendants argue this case should follow *Los*
20 *Angeles Police Dep’t v. United Reporting Publ’g Corp.*, 528 U.S. 32, 34 (1999),
21 *Houchins v. KQED, Inc.*, 438 U.S. 1, 14 (1978), and related cases, which firmly disavow
22 the existence of a government obligation under the First Amendment to disclose

1 government information or records. Plaintiffs rely on *Press-Enterprise v. Superior*
2 *Court*, 478 U.S. 1 (1986) and its progeny, which developed a two-part test to consider
3 when “public access to criminal trials and the selection of jurors is essential to the proper
4 functioning of the criminal justice system.” *Id.* at 7, 11–12. Three circuits and multiple
5 district courts have applied these rules more broadly. *See Leigh v. Salazar*, 677 F.3d 892,
6 899 n.5 (9th Cir. 2012) (collecting cases). The Court will discuss these cases in turn.

7 ***Los Angeles Police Dep’t.*** In *Los Angeles Police Dep’t*, California passed a statute
8 requiring those placing public records requests for names and addresses of recently
9 arrested individuals to “declare that the request is being made for one of five prescribed
10 purposes, and that the requester also declare that the address will not be used directly or
11 indirectly to sell a product or service.” 528 U.S. at 34. A private company in the business
12 of providing the names to attorneys and insurance companies brought a facial challenge.
13 *Id.* The Supreme Court explained

14 Petitioner [the Los Angeles Police Department] contends that the section in
15 question is not an abridgement of anyone’s right to engage in speech, *be it*
16 *commercial or otherwise*, but simply a law regulating access to information
 in the hands of the police department. We believe that, at least for purposes
 of facial invalidation, petitioner’s view is correct.

17 *Id.* at 40 (emphasis added). The Court further reasoned “California could decide not to
18 give out arrestee information at all without violating the First Amendment.” *Id.* (citing
19 *Houchins v. KQED, Inc.*, 438 U.S. 1, 14 (1978)).⁸

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22 ⁸ The Court notes that *Los Angeles Police Department* contained multiple concurring
opinions, none of which dispute the cited reasoning.

1 In *Houchins*, in response to a news station’s First Amendment claim for access to
2 jails to interview inmates following reports of a prisoner’s suicide, the Supreme Court
3 plurality explained that despite the media’s First Amendment right to gather information,
4 “[t]his Court has never intimated a First Amendment guarantee of a right of access to all
5 sources of information within government control.” 438 U.S. at 9. The Court reasoned
6 that “[t]here is no discernible basis for a constitutional duty to disclose, or for standards
7 governing disclosure of or access to information.” *Id.* at 14.⁹ Justice Stewart, concurring
8 with the *Houchins* plurality, stated that “[t]he First and Fourteenth Amendments do not
9 guarantee the public a right of access to information generated or controlled by the
10 government, nor do they guarantee the press any basic right of access superior to that of
11 the public generally.” *Id.* at 16 (Stewart, J., concurring). In a more recent case, *Entler v.*
12 *McKenna*, the Ninth Circuit affirmed the district court’s dismissal of a state prisoner’s
13 claim that a state official had violated his constitutional rights by lobbying for
14 amendments to Washington’s Public Disclosure Act, stating “there is no constitutional
15 right to public disclosure of government documents.” 487 Fed. Appx. 417, 417–418 (9th
16 Cir. 2012). These precedents provide substantial support for Defendants’ argument that

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19 ⁹ The plurality went on at some length on this topic, explaining “Petitioner cannot prevent
20 respondents from learning about jail conditions in a variety of ways, albeit not as conveniently as
21 they might prefer. Respondents have a First Amendment right to receive letters from inmates
22 criticizing jail officials and reporting on conditions. Respondents are free to interview those who
render the legal assistance to which inmates are entitled. They are also free to seek out former
inmates, visitors to the prison, public officials, and institutional personnel, as they sought out the
complaining psychiatrist here.” *Houchins*, 438 U.S. at 15 (internal citations omitted).

1 “laws restricting public access to records do not implicate the First Amendment at all.”
2 Dkt. 47 at 3.

3 ***Press-Enterprise***. The *Press-Enterprise* test, developed in application to the
4 criminal justice system, asks “(1) whether historical experience counsels in favor of
5 public access, and (2) whether public access would play a ‘significant positive role in the
6 functioning of the particular process in question.’” 478 U.S. at 8. In recent years, circuit
7 and district courts have applied this test when they consider “attempts to access a wide
8 range of civil and administrative government activities.” *Leigh*, 677 F.3d at 899.

9 Plaintiffs highlight a Ninth Circuit case applying the test, *Cal-Almond, Inc. v. U.S.*
10 *Dept. of Agriculture*, 960 F.2d. 105, 109–110 (9th Cir. 1992), where an almond handler
11 sought the identities of producers who would vote in a marketing referendum in order to
12 lobby them. *Id.* at 106–07. The Court concluded that a serious constitutional question
13 might exist if the statute did not allow the disclosure. *Id.* at 109. In applying the doctrine
14 of constitutional avoidance, the Circuit reasoned that a tradition of public access to voter
15 lists likely exists, the legislation in question was open to such construction, and therefore
16 “it is reasonable to assume that Congress intended the lists of eligible voters to be a
17 matter of public record.” *Id.* at 110.

18 While this reasoning is dicta, Plaintiffs are correct that the posture of the *Cal-*
19 *Almond* parties is similar to the case at bar to the extent that Plaintiffs Thurber and Benn
20 seek to lobby caregivers to vote for their alternate union. Dkt. 63 at 13. However,
21 Plaintiffs do not meet their burden to present precedent or historical fact showing a
22 tradition of public access to the identities of public employees or union members to

1 satisfy the first part of the *Press-Enterprise* test. *See* Dkt. 63 at 13–14. In considering that
2 factor, the *Press-Enterprise* court described the history of criminal trials dating back to
3 the Norman Conquest, noting that “even our modern procedural protections have their
4 origin in the ancient common-law principle which provided, not for closed proceedings,
5 but rather for rules of conduct for those who attend trials.” 478 U.S. at 8 (internal citation
6 omitted). Plaintiffs cite *Harris* and *Janus* on the “rights of all government employees not
7 to be compelled to finance union speech.” Dkt. 63 at 14 (citing 134 S. Ct. 2618 and 138
8 S. Ct. at 2464). In *Harris*, the Supreme Court specifically distinguished factual
9 circumstances like the one at bar, saying “Petitioners do not contend that they have a First
10 Amendment right to form a rival union. Nor do they challenge the authority of [the
11 certified union] to serve as the exclusive representative of all the personal assistants in
12 bargaining with the State.” 134 S. Ct. at 2640. Plaintiffs quote the Court’s statement in
13 *Janus* that “[d]esignating a union as the employees’ exclusive representative substantially
14 restricts the rights of individual employees” but omit the second half of the Court’s
15 reasoning, that this restriction supports the union’s obligation to provide equal
16 representation for all employees in the bargaining unit regardless of their union
17 membership. 138 S. Ct. at 2460. The Court agrees with Defendants that these recent cases
18 do not establish a “long-recognized tradition of access to public records” or to lists of
19 government employee identities. Dkt. 67 at 5.

20 Addressing the second half of the *Press-Enterprise* test, whether public access
21 plays a significant positive role in the functioning of the particular process in question,
22 Plaintiffs argue public access to caregiver identities will disrupt the unions’ “monopoly”

1 on communication with the caregivers. Dkt. 63 at 14 (“IPs themselves, alternative
2 Unions, or entities like the Freedom Foundation are all prevented from being able to
3 speak to IPs.”). Cases applying *Press-Enterprise* outside the criminal justice context have
4 involved government criminal or civil enforcement, information about public figures or
5 government action, or government meetings. *See Leigh*, 677 F.3d at 899 n.5 (collecting
6 cases). These cases appear united by recognized traditions of citizen government
7 oversight.

8 Plaintiffs do not clarify what process they believe would benefit from increased
9 public access, whether that is caregiver union elections, caregiver participation in
10 collective bargaining, or societal political debate about the value of collective bargaining
11 between caregivers and the state. To the extent Plaintiffs believe it is too difficult to
12 decertify caregiver unions, and public access to caregiver identities would significantly
13 improve union elections, those arguments would be appropriate in a challenge involving
14 the complete context of the state’s collective bargaining laws.¹⁰ That is not the case here.
15 Additional historical analysis and specificity could present a more compelling case, but
16 on the record before the Court, an unestablished tradition of public access combined with
17 a vague positive impact on an unspecified process does not support mandated access to
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19 ¹⁰ For example, there appear to be different thresholds of interest required to initiate
20 representation elections for different types of employees—in an unfair labor practice complaint
21 filed by Thurber’s Pacific Northwest Child Care Association (“PNWCCA”) with the Washington
22 Public Employment Relations Commission against the State of Washington, PNWCCA argues
that the 30 percent showing of interest required for a representation election is too onerous for
child caregivers, particularly when compared to the 10 percent showing required for adult
caregivers under WAC 391-25-051. Dkt. 47-1 at 39.

1 government records under *Press-Enterprise*. Because Plaintiffs have not satisfied the
2 *Press-Enterprise* test, and *Los Angeles Police Dep't* and related cases declare firmly that
3 legislative policy decisions on public records disclosure do not generally implicate
4 fundamental rights under the First Amendment, the Court concludes that Plaintiffs have
5 failed to establish infringement of fundamental First Amendment rights.

6 **c. Ballot Access**

7 Plaintiffs cite one ballot access case, *Bullock v. Carter*, 405 U.S. 134 (1972) for
8 the proposition that the First Amendment “broadly protects not only the expression of
9 speech but also the methods used to facilitate speech,” Dkt. 50 at 19, and another,
10 *Williams v. Rhodes*, 393 U.S. 23 (1968) for the proposition that a facially neutral law
11 burdening associational rights must be justified by a compelling state interest. Dkt. 63 at
12 21. *Bullock* found that the state had created “a system that utilizes the criterion of ability
13 to pay as a condition to being on the ballot, thus excluding some candidates otherwise
14 qualified and denying an undetermined number of voters the opportunity to vote for
15 candidates of their choice” in contravention of equal protection. 405 U.S. at 149.

16 *Williams* held that strict procedural requirements for new parties to place candidates on
17 the presidential election ballot burdened the right to cast effective votes and the right to
18 associate for political purposes and could not survive strict scrutiny. 393 U.S. at 30.

19 However, while these cases in dicta make many persuasive statements about the
20 foundational importance of political organizing and the duty of government to refrain
21 from burdening such organizing, they do so in the context of election to public office. As
22 the Supreme Court explains in *Anderson v. Celebrezze*, 460 U.S. 780, 793 (1983) “[o]ur

1 ballot access cases . . . focus on the degree to which the challenged restrictions operate as
2 a mechanism to exclude certain classes of candidates from the electoral process.”
3 Plaintiffs do not seek access to the electoral process, and do not cite authority applying
4 election law doctrine to union elections, which have their own complex set of regulations
5 and oversight.

6 **d. Right to Listen**

7 Plaintiffs argue that withholding caregiver identities interferes with the caregivers’
8 right to hear Plaintiffs’ speech. Dkt. 50 at 24–26 (citing *Red Lion Broadcasting Co. v.*
9 *FCC*, 395 U.S. 367, 390 (1969) (“right of the public to receive suitable access to social,
10 political, esthetic, moral, and other ideas”); *Thomas v. Collins*, 323 U.S. 516, 534 (1945)
11 (right of workers to “hear what [the labor organizer] had to say); *Martin v. City of*
12 *Struthers, Ohio*, 319 U.S. 141, 143–44 (1943) (“The ordinance does not control anything
13 but the distribution of literature, and, in that respect, it substitutes the judgment of the
14 community for the judgment of the individual householder.”)). Defendants “do[] not
15 dispute that the corollary to freedom of speech is the right to receive information,” but
16 argue that Plaintiffs’ reliance on caselaw restricting a means of communication to a
17 particular audience is misplaced. Dkt. 60 at 10. The right to receive information is
18 derivative of the right to speak: that is, “where a speaker exists . . . the protection
19 afforded is to the communication, to its source and to its recipients both.” *Va. State Bd. of*
20 *Pharmacy v. Va. Citizens Consumer Counsel, Inc.*, 425 U.S. 748, 756 (1976). Because
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1 the Court finds Plaintiffs have not established infringement of their free speech, the Court
2 finds no derivative burden on caregivers' right to listen.¹¹

3 **e. Viewpoint Discrimination**

4 Plaintiffs allege that "Part III of [the Initiative] favors the Union's political and
5 ideological viewpoints because the [I]nitiative exempts unions from its coverage
6 Because the Initiative only burdens the speech of individuals and entities with views
7 divergent from those of the Union, it is viewpoint-discriminatory." Dkt. 1, ¶ 116.

8 Even if Plaintiffs' records requests did constitute speech, the Initiative still does
9 not discriminate based on viewpoint by disclosing caregiver identities to the certified
10 collective bargaining representative and not Plaintiffs. As the Supreme Court explained in
11 *Perry Education*, when the rival union alleged access to teacher mailboxes for the
12 certified union constituted viewpoint discrimination, "it is more accurate to characterize
13 the access policy as based on the *status* of the respective unions rather than their views."
14 460 U.S. at 49.

15 Plaintiffs are not the certified representative. The Initiative discloses caregiver
16 identities to the certified bargaining representative under RCW 41.56.080, or parties to
17 contracts with the state where disclosure is required or the entity is providing services to
18 vulnerable residents or conducting research about them. Dkt. 47-1 at 11–12. These are all
19 status distinctions, based on a contractual relationship or legal obligation to provide

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21 ¹¹ The Court further notes that Plaintiffs did not include this claim in their complaint, *see* Dkt. 1,
22 nor explain how this claim impacts the rights of Plaintiffs actually before the court, as opposed to
caregivers in Washington generally, whom Plaintiffs do not claim to represent. *See* Dkts. 50, 63,
65.

1 collective bargaining services, and do not involve “unbridled discretion in the hands of a
2 government official or agency” as found unconstitutional in *City of Lakewood v. Plain*
3 *Dealer Publishing Co.*, 486 U.S. 750 (1988) or make a content-based distinction between
4 topics of speech, *see Boos v. Berry*, 485 U.S. 312 (1988) (striking down ordinance
5 prohibiting signs criticizing embassy within 500 feet of the embassy). The *Janus* court’s
6 reasoning that an exclusive representative designation comes with “special privileges” for
7 the union like “obtaining information about employees” further supports a conclusion
8 that providing access to information for the certified bargaining representative and not for
9 others would not represent a First Amendment violation. 138 S. Ct. at 2467. Therefore,
10 Plaintiffs’ claim of viewpoint discrimination is unfounded, and the Court grants summary
11 judgment for Defendants on Plaintiffs’ Claim Three.

12 **f. Overbreadth**

13 Plaintiffs allege Part Three of the Initiative is overbroad, its “real, and sole,
14 purpose is to silence the Plaintiffs’ viewpoints,” and its “restrictions on access to Provider
15 lists bears [sic] a close and obvious nexus to Plaintiffs’ speech.” Dkt. 1, ¶¶122–123.
16 Plaintiffs cite *United States v. Stevens*, 559 U.S. 460 (2010) to define the concept of
17 overbreadth, describing legislation where “a substantial number of its applications are
18 unconstitutional, judged in relation to the statute’s plainly legitimate sweep” but proceed
19 to discuss *City of Lakewood*, 486 U.S. 750, *Arcara v. Cloud Books, Inc.*, 478 U.S. 697
20 (1986), and *Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575
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1 (1983), cases not typically associated with the overbreadth doctrine.¹² The Court will
2 address Plaintiffs’ arguments on the cases discussed.

3 Plaintiffs argue that the Initiative could fall under the Supreme Court’s “course of
4 conduct” analysis, *see* Dkt. 50 at 26, where the Court “has applied First Amendment
5 scrutiny to a statute regulating conduct which has the incidental effect of burdening the
6 expression of a particular political opinion,” *Arcara*, 478 U.S. at 702 (citing *United States*
7 *v. O’Brien*, 391 U.S. 367 (1968)). Applying this test to the burden on speech posed by
8 closing an adult bookstore due to prostitution activity, the Supreme Court found “unlike
9 the symbolic draft card burning in *O’Brien*, the sexual activity carried on in this case
10 manifests absolutely no element of protected expression.” *Arcara*, 478 U.S. at 705. While
11 the distinction between prostitution and books may be more stark than the distinction
12 between records requests and mailer distribution, the Court is not convinced Plaintiffs
13 have shown that their records requests constitute expressive activity. There is no doubt
14 Plaintiffs wish to identify the caregivers so they can speak to them. But Plaintiffs do not
15 suggest they place public records requests for the purpose of the *request* encouraging the
16 caregivers to leave their union or join an alternative, nor do they suggest they are
17 demonstrating their opposition to state policy through placing public records requests.

19 ¹² Cases and concepts typically associated with overbreadth include *Schad v. Borough of*
20 *Mt. Ephraim*, 452 U.S. 61, 66 (1981) (town ordinance prohibited live entertainment to target
21 nude dancing, but swept in plays, concerts, and musicals), *Broadrick v. Oklahoma*, 413 U.S. 601,
22 615–16 (1973) (state law prohibiting political activity by government employees not facially
overbroad on potential to sweep in political button-wearing or bumper sticker displays), or
Houston v. Hill, 482 U.S. 451 (1987) (ordinance prohibiting interrupting police in course of their
duties swept in impermissible amount of protected speech).

1 They seek the records so they can more efficiently identify their target audience to direct
2 their canvassing or mailer distribution. In sum, Plaintiffs fails to establish that they
3 express their position by placing the records request.

4 *Minneapolis Star* and *City of Lakewood* are similarly inapposite, involving,
5 respectively, a tax on newsprint and ink, 460 U.S. at 585, and a requirement for a permit
6 granted at the mayor's discretion to place newsracks on public property, 486 U.S. at 754.
7 These cases both address the Supreme Court's particular concern about legislation
8 "directed narrowly and specifically at expression or conduct commonly associated with
9 expression: the circulation of newspapers." *See* Dkt. 50 at 26 (citing *City of Lakewood*,
10 486 U.S. at 760). Plaintiffs fail to establish that the Initiative is invalid on the basis of
11 overbreadth or otherwise violates the First Amendment, and therefore the Court grants
12 summary judgment for Defendants on Plaintiffs' Claim Four.

13 **g. Freedom of Association**

14 Plaintiffs Thurber and Benn allege violation of their freedom of association,
15 explaining that "[w]ithout the list of Childcare Providers, [they] cannot exercise their
16 fundamental associational rights" to decertify SEIU "and are permanently subjected to an
17 association with SEIU 925." Dkt. 1, ¶ 130. Plaintiffs cite *Thomas*, 323 U.S. at 519, 522
18 n.2, where the Supreme Court found a Texas law requiring an organizer's card for union
19 solicitation as applied to a speech by the president of a large national union was a prior
20 restraint on his right to free speech and free association. Dkt. 50 at 27. There, the court
21 reasoned that "[t]he right thus to discuss, and inform people concerning, the advantages
22 and disadvantages of unions and joining them is protected not only as part of free speech,

1 but as part of free assembly.” *Id.* at 532. Plaintiffs also cite *State Emp. Bargaining Agent*
2 *Coal. v. Rowland*, 718 F.3d 126, 132 (2nd Cir. 2013) where labor organizations and state
3 employees alleged the state “discriminatorily la[id] off only union members when
4 reducing the state’s work force.” Dkt. 50 at 27. There, the Second Circuit reasoned that
5 “[c]onditioning public employment on union membership, no less that on political
6 association, inhibits protected association and interferes with government employee’s
7 freedom to associate,” thus subjecting “employment decisions based on union
8 membership” to strict scrutiny. *Rowland*, 718 F.3d at 133–35. Here, as discussed above,
9 the operative restriction is of public records, not speech or discussion. Further, the
10 Initiative’s limits on access to public records are not employment decisions.

11 The Campaign highlights that traditional First Amendment associational
12 protections include the right to refuse to disclose membership lists for advocacy groups,
13 *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1984), and right to refuse
14 entry of undesired individuals into an association, *Roberts v. United States Jaycees*, 468
15 U.S. 609, 623 (1984) and correctly points out that a government obligation to assist a
16 challenger union does not fall into any of these categories. Dkt. 48 at 30.

17 Finally, Plaintiffs cite *Janus* to support their argument that associational rights are
18 implicated in exclusive union representation. However, as Defendants clarify, *Janus* held
19 union agency fees from nonmembers constituted compelled speech in violation of First
20 Amendment. 138 S. Ct. 2486. It did not hold, as Plaintiffs argue, that exclusive union
21 representation is compelled association in violation of the First Amendment, or that such
22 a “compelled association” creates a state obligation “to disclose to them with whom they

1 are associating.” Dkt. 63 at 11. Plaintiffs do not cite to other authority establishing that
2 exclusive representation of a collective bargaining unit constitutes an impermissible
3 restriction on the right to association.

4 The Court is persuaded by Defendants’ argument that despite the long and highly
5 litigated history of labor relations laws such as the federal Labor-Management Relations
6 Act, 29 U.S.C § 7 *et seq.*, and the Washington Public Employees’ Collective Bargaining
7 Act, RCW Chapter 41.56, neither party has cited authority requiring an employer to
8 disclose the identities of the members of the collective bargaining unit to a group wishing
9 to associate with them. Dkt. 47 at 24. As previously noted, to the extent Plaintiffs
10 Thurber and Benn wish to decertify the existing child caregiver union and believe the
11 Initiative’s disclosure provision makes that effort too onerous, they fail to establish that
12 the Initiative infringes their First Amendment right to freedom of association. Therefore,
13 the Court grants summary judgment for Defendants on Plaintiffs’ Claim Five.

14 **C. Equal Protection**

15 Plaintiffs bring two equal protection claims: first, that the Initiative interferes with
16 their fundamental rights of speech and association and therefore is subject to heightened
17 scrutiny under the Equal Protection Clause, and second, that the Initiative makes an
18 impermissible distinction among similarly situated records requesters and was motivated
19 by animus, thus failing even rational basis review. Dkt. 1, ¶¶ 89–109. Plaintiffs allege the
20 Initiative is unconstitutional both facially and as applied to Plaintiffs. *Id.*

1 **1. Interference with Fundamental Rights**

2 Plaintiffs allege that the Initiative “significantly interferes with citizens’
3 fundamental rights and . . . does not pass strict scrutiny.” Dkt. 1, ¶ 90. “[E]qual protection
4 analysis requires strict scrutiny of a legislative classification only when the classification
5 impermissibly interferes with the exercise of a fundamental right or operates to the
6 peculiar disadvantage of a suspect class.” *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307, 312
7 (1976). Plaintiffs do not allege the classification burdens a suspect class, *see* Dkt. 1, ¶ 109
8 (“Defendants treat similarly-situated, non-suspect class groups differently”), and the
9 Court found no interference with Plaintiffs’ fundamental First Amendment rights.
10 Therefore, the Court finds no equal protection violation that requires strict scrutiny, and
11 grants summary judgment for Defendants on Plaintiffs’ Claim One.

12 **2. Animus and Similarly Situated Groups**

13 Plaintiffs allege they are similarly situated to the certified collective bargaining
14 representative permitted to access caregiver identities under § 8(d) of the Initiative,
15 because “both are groups and individuals that engage in constitutionally protected speech
16 with [caregivers],” and so should be afforded equal access to caregiver identities. Dkt. 1,
17 ¶101. Plaintiffs further allege the Initiative “was drafted with the intention to silence the
18 Foundation’s political speech and thus harm the Foundation” and was “motivated solely
19 by [the unions’] animus toward the Foundation, its outreach efforts, and its political
20 speech.” Dkt. 1, ¶ 106, 107.

21 “The Equal Protection Clause of the Fourteenth Amendment commands that no
22 State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’
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1 which is essentially a direction that all persons similarly situated should be treated alike.”
2 *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (quoting *Plyler*
3 *v. Doe*, 457 U.S. 202 (1982)). “[I]f a law neither burdens a fundamental right nor targets
4 a suspect class, we will uphold the legislative classification so long as it bears a rational
5 relation to some legitimate end.” *Romer v. Evans*, 517 U.S. 620, 631 (1996).

6 Rational basis review requires two steps of analysis. First, “[d]oes the challenged
7 legislation have a legitimate purpose?” *Western and Southern Life Ins. Co. v. State Bd. of*
8 *Equalization of Cal.*, 451 U.S. 648, 668 (1981). A “bare . . . desire to harm a politically
9 unpopular group” can never constitute a legitimate government purpose. *Romer*, 517 U.S.
10 at 634 (quoting *Dep’t of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)). Further, “[t]he
11 State may not rely on a classification whose relationship to an asserted goal is so
12 attenuated as to render the distinction arbitrary or irrational.” *City of Cleburne*, 473 U.S.
13 at 446 (internal citations omitted).

14 Second, “[w]as it reasonable for the lawmakers to believe that use of the
15 challenged classification would promote that purpose?” *Western and Southern Life Ins.*
16 *Co.*, 451 U.S. at 668. Plaintiffs, as “those challenging the legislative judgment” have the
17 burden to “convince the court that the legislative facts on which the classification is
18 apparently based could not reasonably be conceived to be true by the governmental
19 decisionmaker.” *Vance v. Bradley*, 440 U.S. 93, 111 (1979) (upholding mandated
20 retirement at age 60 for Foreign Service employees, in contrast to age 70 for Civil
21 Service employees) (collecting cases). Challengers may present evidence that the
22 legislation is irrational, but “they cannot prevail so long as ‘it is evident from all the

1 considerations presented to [the legislature], and those of which we make take judicial
2 notice, that the question is at least debatable.” *Minn v. Clover Leaf Creamery Co.*, 449
3 U.S. 456, 464 (1981) (quoting *United States v. Carolene Products Co.*, 304 U.S. 144,
4 153–54 (1938)). The Ninth Circuit explains that the equal protection doctrine outside
5 infringement on fundamental rights and discrimination against suspect classes, asks
6 “[courts] to *imagine any conceivable basis* supporting a law, even if not advanced by the
7 government.” *Fowler Packing Company, Inc. v. Lanier*, 844 F.3d 809, 815 n.3 (9th Cir.
8 2016) (emphasis added). Here, the classification at issue is between the certified
9 collective bargaining representative and Plaintiffs, who would like to receive the list of
10 caregiver identities for political speech or to elect an alternative union.

11 **a. Similarly Situated Groups**

12 Plaintiffs Boardman and Freedom Foundation seek to communicate with
13 caregivers about their “*Harris* rights.” Dkt. 50 at 10–11. The certified collective
14 bargaining representative has a legal responsibility to negotiate on behalf of all caregivers
15 with the state employer about their employment. *See* RCW 41.56.080. Plaintiffs
16 Boardman and Freedom Foundation do not assert that they have or wish to assume this
17 legal responsibility. Therefore, Plaintiffs Boardman and Freedom Foundation are not
18 similarly situated to the certified collective bargaining representative. Because these
19 plaintiffs are not similarly situated to those given the benefit they seek, a classification
20 treating them differently does not violate the Equal Protection Clause on that basis.

21 Plaintiffs Thurber and Benn assert that they wish to communicate with child
22 caregivers about issues relevant to the profession, and that they wish to call an election to

1 replace SEIU 925 with their association, the PNWCCA. Dkt. 50 at 10. To the extent that
2 they wish to discuss concerns with the caregivers, they are not similarly situated to the
3 certified collective bargaining representative. To the extent that they wish to assume the
4 position of certified bargaining representative vis-à-vis the state employer, their
5 circumstance is similar, but they are not the certified representative. They are a rival
6 union. Courts recognize that certification of an exclusive representative is a permitted
7 component of collective bargaining regulatory structures, which may include differential
8 access to employees in the bargaining unit. *See, e.g., Perry Education*, 460 U.S. at 49
9 (differential access to teacher mailboxes based on status or lack thereof as certified
10 bargaining representative does not violate the Equal Protection Clause); *Janus*, 138 S. Ct.
11 at 2467 (unions will still seek exclusive representative designation without mandated
12 agency fees because designation often affords them “special privileges, such as obtaining
13 information about employees”). Therefore, the Initiative’s distribution of caregiver
14 identities to the certified bargaining representative but not Plaintiffs does not violate the
15 Equal Protection Clause on the basis of impermissible discrimination among similarly
16 situated groups.

17 **b. Animus**

18 Next, the Court considers Plaintiffs’ argument that the Initiative’s decision to
19 withhold previously available caregiver identities from public records requests raises an
20 “inevitable inference that the disadvantage imposed is born of animosity toward the class
21 of persons affected.” *See* Dkt. 50 at 28 (citing *Romer*, 517 U.S. at 634). Plaintiffs argue
22 that the Initiative targets their public records requests and was “motivated by animus

1 against Plaintiffs and their message.” Dkt. 50 at 29. The stated purpose of Part Three of
2 the Initiative is to protect sensitive personal information about in-home caregivers for
3 vulnerable populations “because its release could facilitate identity crimes against
4 seniors, vulnerable individuals, and the other vulnerable populations that these caregivers
5 serve.” Dkt. 47-1 at 10. The State also argues that protecting the privacy of the caregivers
6 themselves is another legitimate governmental purpose promoted by withholding
7 caregiver identities. Dkt. 47 at 16 (citing *Wash. Pub. Emp. Ass’n v. Wash. State Ctr. For*
8 *Childhood Deafness & Hearing Loss*, 1 Wn. App. 225, 243 (2017) (state constitution
9 provides expectation of privacy for a public employee’s date of birth in combination with
10 his or her name), *review granted*, 190 Wn.2d 1002 (2018)).

11 Plaintiffs do not contest that preventing identity crimes against seniors and
12 vulnerable individuals is a legitimate government purpose, *see Western and Southern Life*
13 *Ins. Co.*, 451 U.S. at 668, but argue that the impact of a PRA exception on these crimes is
14 speculative, and caregiver privacy is an after-the-fact justification, supporting an
15 inference that the true motivation was animus. Dkt. 63 at 11. “When the politically
16 unpopular group is not a traditionally suspect class, a court may strike down the
17 challenged statute under the Equal Protection Clause if the statute serves no legitimate
18 governmental purpose *and* if impermissible animus toward an unpopular group prompted
19 the statute’s enactment.” *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1200 (9th
20 Cir. 2018) (internal quotation omitted) (describing this standard as “searching scrutiny”)
21 Therefore, the Court considers whether the legislation’s method of action is “rationally
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1 related to the achievement” of the legitimate purpose. *Clover Leaf Creamery Co.*, 449
2 U.S. at 462–63.

3 The Initiative does not explicitly articulate how withholding caregiver identities
4 will protect vulnerable individuals. The State argues that caregivers often work in their
5 client’s homes, Dkt. 47 at 16 (citing Dkt. 1, ¶ 20), and as the Initiative’s general
6 legislative findings state in § 4, these vulnerable clients frequently have “less ability to
7 protect themselves . . . and can be targeted using information available through public
8 sources, including publically available information that identifies such individuals or
9 their in-home caregivers.” *Id.* (citing Dkt. 47-1 at 7). The Campaign’s motion for
10 summary judgment cites Washington enforcement efforts to prevent fraud and identity
11 theft and notes that the Attorney General’s Fraud Fighters consumer education program
12 was established “specifically to assist the elderly because they more often are targeted for
13 fraud.” Dkt. 48 at 10. Voters received communications from the Campaign with details
14 about the rates of financial fraud committed against seniors, the likelihood of fraud
15 against seniors going unreported, and headlines from local news stories about cases of
16 seniors losing their savings to fraud. Dkt. 62-1 at 4–5. While this evidence is thin, it is
17 analogous to legislative history discussing the “situations in which agricultural
18 production facilities have been, or may be, harmed as a result of a misrepresentation
19 leading to the acquisition of records” in *Animal Legal Defense Fund*, 878 F.3d at 1201.

20 These points support an inference that withholding a list of identities that would
21 pinpoint homes containing vulnerable seniors reduces the amount of publically available
22 information that could be used identify targets for financial fraud and identity theft,

1 potentially reducing the rate at which seniors fall victim to these crimes. Plaintiffs argue
2 that the purpose of protecting seniors and vulnerable individuals from fraud is “based on
3 nothing more than speculation that some person might file a [public records request] and
4 (now on record for requesting the information) commit identity theft or fraud.” Dkt. 50 at
5 29. Plaintiffs argue that the law will not achieve its purpose of preventing identity theft
6 because caregiver contact information was already exempted from disclosure, supporting
7 an inference that the “only true effect of [the Initiative’s Public Records Act] provisions
8 was to preclude anyone other than approved groups from being able to learn the identity
9 of [caregivers].” Dkt. 50 at 13.

10 However, Plaintiffs anticipate being able to “access the individual [caregivers]
11 through mail directed to them and door-to-door canvassing” once they are provided a list
12 of caregiver names. Dkt. 50 at 24. Plaintiffs suggest wrongdoers would not want to
13 identify themselves by placing a public records request, but do not explain why
14 legislative reasoning that identity thieves could also find direct contact information once
15 they have a list of likely targets is irrational or speculative. Plaintiffs affirm that the
16 primary work location for many caregivers is their own homes. *See* Dkt. 64, Second
17 Declaration of Matt Hayward at 3, 4. If a caregiver’s identity leads easily to address
18 information to support direct mail or canvassing efforts, it appears rational for the voters
19 to reason that protecting caregiver identities removes an avenue that could be abused to
20 identify homes with vulnerable residents. Identity theft and financial fraud against seniors
21 is undoubtedly a real problem. The Court finds that “it is evident from all the
22 considerations presented to [the legislature],” or here, to the general voting public, that on

1 the efficacy of reducing publically available information about caregivers to reduce
2 possible avenues to target seniors for identity theft and similar crimes, “the question is at
3 least debatable,” and survives rational basis scrutiny. *Clover Leaf Creamery Co.*, 449
4 U.S. at 464.

5 The parties devote substantial briefing to the question of whether union animus
6 against the Freedom Foundation would render the Initiative’s withholding of previously
7 available information an illegitimate action driven by impermissible animus. Plaintiffs’
8 most compelling argument may be that the true, or at least primary motivation of the
9 Initiative’s drafters and promoters was to restrict the Foundation’s ability to communicate
10 with caregivers about their right to withhold financial support from the unions. Plaintiffs
11 have submitted both internal communications of union officials as well as
12 communications from the unions to its members.¹³ Based on this evidence and SEIU
13 775’s loss in the state court, one could rationally infer that the predominate motivating
14 factor for the Initiative and the Campaign’s support for the Initiative was animus toward
15 the Freedom Foundation and outside entities with prerogatives similar to the Foundation.
16 That inference leads to the conclusion that the proffered motivation of protecting seniors
17 was merely pretext for the true motivation of animus. This rational conclusion, however,

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19 ¹³ Dkt. 56-8 at 2, Email from SEIU 775 to Members (“There’s one more way you can
20 fight to stop the Freedom Foundation: When you get your ballot in the mail, vote YES on [the
21 Initiative], which protects the private information of caregivers and our state’s most
22 vulnerable.”); *id.* at 4, Email from SEIU 775 to Members (“By voting [yes on the Initiative] we
protect caregivers in our union from anti-union bullying of the Freedom Foundation.”); *id.* at 10–
11, Email from SEIU 775 Legislative and Policy Director (“[The Initiative] initially began as
legislation to look into how outside groups were using/abusing the Public Records Act to get
private information of long term care workers and their clients . . .”).

1 is of no moment to the Court’s consideration of the issues because Plaintiffs have failed
2 to submit any evidence that this allegedly impermissible animus “prompted the statute’s
3 enactment.” *Animal Legal Defense Fund*, 878 F.3d at 1200. The voters of Washington
4 enacted the Initiative, not the Washington legislature. Thus, to prove their claim,
5 Plaintiffs would have to show that the Washington voters harbored impermissible
6 animus, which Plaintiffs have failed to do, and in any case almost certainly could not do.

7 Instead, the text of the Initiative and the materials used to promote it to the general
8 public can only lead to the conclusion that the legislation received voter approval because
9 of the widely and legitimately promoted purpose of protecting a vulnerable population of
10 the state’s citizens from identity theft and financial fraud. Moreover, the motivations of
11 the Campaign cannot render void a lawfully enacted initiative by the voters of
12 Washington State even if some evidence establishes that the electorate may have been
13 misled by the Initiative’s chief proponent as to the proponent’s true motivations.
14 Therefore, the legitimate purpose for the PRA exception survives even a searching form
15 of rational basis scrutiny, and the Court grants summary judgment for Defendants on
16 Plaintiffs’ Claim Two.

17 In sum, the Court concludes that Plaintiffs have failed to meet their burden to
18 dislodge the Initiative’s presumption of constitutionality.

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